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17

18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 MOOG INC.,  
21 Plaintiff,  
22 v.  
23 SKYRYSE, INC., ROBERT ALIN  
24 PILKINGTON, MISOOK KIM, and  
25 DOES NOS. 1-50,  
26 Defendants.

Civil Action No. 2:22-cv-09094-GW-  
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**JOINT REPORT REGARDING  
MEET AND CONFER ON SEARCH  
TERMS AND OTHER ISSUES SET  
FORTH IN THE COURT'S ORDER  
AT DKT. 564**

1 Pursuant to the Court’s final ruling regarding Moog’s Motion to Enforce  
2 dated June 30, 2023 (Dkt. 564) (the “Order”), and the parties’ joint stipulations  
3 filed on July 28, 2023 and August 4, 2023 (Dkts. 588, 589, 596, 598) (the  
4 “Stipulations”), Plaintiff and Counterdefendant Moog, Inc. (“Moog”) and  
5 Defendant and Counterclaimant Skyryse, Inc. (“Skyryse”) (collectively, the  
6 “Parties”) hereby respectfully submit this joint report “setting forth their respective  
7 positions on any outstanding issues.” The Court’s ordered the Parties to “meet and  
8 confer regarding search terms, including search terms to locate schematics and  
9 other drawings/images, to run across the Polarion Repository, the Git Repository,  
10 and the Google Drive Account folders noted above, and to have a finalized set of  
11 search terms by July 31, 2023.” (Dkt. 564 at 10.) The Stipulations twice continued  
12 the deadline to agree on search terms and protocols, to August 11, 2023. The  
13 Parties have met and conferred telephonically and in writing throughout the past  
14 six weeks. This joint report provides Moog’s and Skyryse’s respective positions  
15 regarding all outstanding issues that have not been agreed upon by the Parties.

## MOOG' STATEMENT

## I. Preliminary Statement

18 While the Parties have been able to resolve many disputes in response to the  
19 Order, at least three key disputes remain unresolved.

20       **First**, despite the Court’s order that Skyryse must produce a “complete  
21 forensic imag[e]” of Reid Raithel’s Skyryse-issued laptop (Dkt. 564 at 10), Moog  
22 recently discovered that the laptop image produced by Skyryse is far from  
23 complete. Critical data such as all of Mr. Raithel’s e-mail files, as well as other  
24 folders related to file access and activity, are missing. Moreover, the limited data  
25 collection is dated April 8, 2022, shortly after the case was filed, even though Mr.  
26 Raithel continued to use his Skyryse laptop (including potential Moog information  
27 on that laptop) well after this date. Skyryse does not dispute any of this. These  
28 issues should have been disclosed to the Court and Moog long ago. Moog has

1 serious concerns that Mr. Raithel's Skyryse-issued laptop was not sufficiently  
2 preserved during the pendency of this lawsuit. The Court should order that Skyryse  
3 produce a current, complete forensic copy of Mr. Raithel's Skyryse-issued laptop,  
4 along with any other data preserved from the April 8, 2022 collection from Mr.  
5 Raithel's laptop that has not yet been produced.

6 ***Second***, after encouraging the Court to order search terms be run through the  
7 data and metadata stored on its Google Drive repository as an alternative to giving  
8 Moog's retained experts access to the repository – specifically reassuring the Court  
9 that “search terms work” during the June 29 hearing (6/29/23 Hrg. Tr. at 15:15) –  
10 Skyryse has now represented that metadata is not searchable. This also should have  
11 been previously disclosed to the Court and Moog when Skyryse represented that it  
12 could apply search terms that would include metadata. Moog has suggested a  
13 number of potential solutions over the past 45 days, but ultimately, Skyryse is  
14 unwilling to process its full Google Drive such that metadata is searchable. As  
15 discussed with the Court and demonstrated throughout Moog's Motion to Enforce  
16 (Dkt. 400), the ability to search metadata is critical because in many instances, it is  
17 only in the metadata that Moog's ownership of materials becomes evident. For  
18 example, Moog's experts have found dozens of documents in Skyryse's possession  
19 containing the name “Moog” or various iterations thereof in document metadata  
20 indicating the author of the document. Skyryse's objections based on burden also  
21 lack credibility due to its total lack of transparency in response to Moog's repeated  
22 requests for information. The Court should order Skyryse to comply with the  
23 Order within 14 days, and run all of Moog's proposed search terms through the  
24 entirety of the Google Drive once the Google Drive contents have been processed  
25 so that the metadata is searchable.

26 ***Third***, due to the volume and breadth of defendants' theft (approximately  
27 1.4 million files across dozens of programs), Moog prepared a list of 437 search  
28

1 terms for the meet and confer process,<sup>1</sup> but Skyryse has objected to 21 of those  
 2 terms. Based on the limited search term hit count information provided by Skyryse  
 3 to date, however, none of the search terms at issue present an undue burden to  
 4 Skyryse. In aggregate, Skyryse represents it would have to review approximately  
 5 113,000 documents from its Google Drive and Git repositories. Given the size and  
 6 nature of this case, as well as Defendants' theft and misappropriation of  
 7 approximately 1.4 million Moog files, such a volume is proportional to the needs  
 8 of the case and the Court's Order. The Court should disregard Skyryse's objections  
 9 to certain of Moog's proposed search terms.

10 Moog respectfully requests that the Court schedule a hearing on the  
 11 outstanding issues set forth herein. The Parties currently have a hearing scheduled  
 12 on August 24, 2023 regarding Skyryse's Motion Objecting to Magistrate Judge  
 13 Rocconi's June 14, 2023 Order (Dkt. 555). It may be most convenient for the Court  
 14 and all Parties to schedule the hearing on the instant issues on the same date.

15 **II. Skyryse's Failure to Produce a Complete Forensic Image of Reid  
 16 Raithel's Skyryse Laptop**

17 The Court's order on Moog's Motion to Enforce and for Sanctions dated  
 18 June 30, 2023 provides in relevant part: "The Court orders Skyryse to produce  
 19 ***complete forensic images*** of Ms. Bird and Mr. Raithel's Skyryse-issued laptops to  
 20 iDS within 30 days of this Order, after conducting a privilege review." (Dkt. 564 at  
 21 10, emphasis added).

22 On July 28, 2023, Skyryse advised iDS that "FTI has shipped to iDS images  
 23 for the laptops of Reid Raithel and Lori Bird." Skyryse provided no other  
 24 information regarding the images. The images of those devices became available  
 25 for Moog's review on August 3, 2023.

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26 <sup>1</sup> Approximately 70 of these search terms focused on software-related files and  
 27 data (and contained search terms based on Moog flight control programs and other  
 28 terms unique to Moog software documents), whereas the other 367 terms consisted  
 largely of unique alphanumeric identifiers specific to Moog facilities, contracts,  
 and equipment.

1 Moog's experts have conducted an initial assessment of these images. While  
2 it appears that Skyryse did produce a complete forensic image of a Mac computer  
3 with Ms. Bird's user data to which limited privilege redactions were applied, it  
4 appears that Skyryse did not produce a complete forensic image of Mr. Raithel's  
5 Skyryse-issued laptop. Specifically, it appears that on April 8, 2022, shortly after  
6 this lawsuit was filed, there was a limited collection of files from Mr. Raithel's  
7 Skyryse computer, called "DCCollection\_2022\_04\_08\_16-38-42.L01," and this is  
8 what was produced to iDS instead of a complete forensic image. Beyond the  
9 completeness issues, the date of the collection is also independently concerning  
10 since it does not capture all of Mr. Raithel's activity on his computer during his  
11 tenure at Skyryse in possession of Moog nonpublic information. According to his  
12 LinkedIn page, Mr. Raithel did not leave Skyryse until April of 2023.

13 The collection of Mr. Raithel's files is incomplete and deficient. **Mr.**  
14 **Raithel's e-mail files are missing.** The collection is also missing critically relevant  
15 files and logs maintained by the operating system that track a person's recent file  
16 and folder activity, including missing folders which contain information about file  
17 activity tracked by the operating system (including deleted files) and folders which  
18 contain an index of file activity. Notably, the image of Ms. Bird's Skyryse-issued  
19 laptop image contains all of these critical pieces of information. This information  
20 is especially important in the case of Mr. Raithel, because these missing logs are  
21 the location most likely to contain evidence of Mr. Raithel plugging in and  
22 removing the hard drive he used to steal files from Moog.

23 Moog raised these issues with Skyryse via e-mail on August 7, 2023, and  
24 demanded immediate compliance with the Court's Order. (*See* Ex. A). In response,  
25 Skyryse acknowledged that the collection of Mr. Raithel's Mac laptop was not  
26 complete, and was instead "performed at a logical level" using a tool called  
27 "Cellebrite Digital Collector" due to an alleged "limitation inherent in DC with  
28 respect to the version of OS X on Mr. Raithel's laptop." (*Id.*) Later during meet

1 and confer, Skyryse contended that the partial collection was required because of  
2 an issue with using Cellebrite in conjunction with an M1 computer processor and  
3 Mac OS Version 12.0 or 12.1 that was on Mr. Raithel's laptops.

4 However, Skyryse's explanation is not credible. Cellebrite has two  
5 collection functions: imaging and collection. The "collection" function was used in  
6 connection with Mr. Raithel's laptop, where the examiner manually selects what  
7 data to collect from the following buckets: User Files, System Data, System Files,  
8 and Additional Files. Even if there were collection hurdles because of the  
9 combination of the computer processor and operating system version on Mr.  
10 Raithel's laptop, Skyryse evidently did not use the "Additional Files" option to  
11 collect all available data and files (such as Mr. Raithel's e-mail files and the  
12 relevant logs) that were not captured by the other buckets. As a result, relevant and  
13 available data on Mr. Raithel's laptop was not collected and has not been  
14 produced. Notably, Skyryse produced complete images of Lori Bird's and Alin  
15 Pilkington's Mac OS Version 12 laptops (same OS as Mr. Raithel's) using  
16 Cellebrite (same tool used with Mr. Raithel). And, the incompleteness of the  
17 collection also does not address the date of the collection (April 8, 2022), which  
18 precludes Moog from discovering key evidence regarding Mr. Raithel's viewing  
19 and use of Moog information in the year between the collection date and his  
20 departure from Skyryse.

21 Moog's concerns regarding Mr. Raithel's laptop are heightened because of  
22 Skyryse's lack of transparency regarding this issue. Given the opportunity to  
23 discuss this very issue with the Court during the June 29 hearing, after having the  
24 opportunity to review the Court's tentative ruling ordering the turnover of a  
25 complete image of Mr. Raithel's laptop (the language of the tentative in this regard  
26 was identical to the Court's final order), Skyryse was silent. Instead, it argued that  
27 "we still think that discovery from those laptops may be in order, but there is a way  
28 to find out what is relevant, not turn over the entire machines...." (6/29/23 Hrg.

1 Tr. at 31:3-6.) Had the Court agreed with Skyryse, Moog might never have  
2 become aware of the serious issues with the collection of Mr. Raithel's laptop.

3 While Skyryse communicated to Moog during the meet and confer process  
4 that they were previously unaware of this issue, the partial collection is also  
5 consistent with Moog's objections to the incomplete analysis performed by  
6 Skyryse's expert Michael Bandemer in connection with Mr. Raithel's laptop,  
7 where he only reviewed "daily out" logs instead of several other critical pieces of  
8 data. (Dkt. 508 at 10-11.) Specifically, Mr. Bandemer admitted in deposition that  
9 the "daily out" logs were the only logs he was instructed to review, even though  
10 they were woefully inadequate to determine whether Mr. Raithel had plugged in  
11 the hard drive he had used to steal Moog materials. Given these new revelations,  
12 Moog questions whether Mr. Bandemer's analysis was incomplete because the  
13 relevant logs from Mr. Raithel's laptop were not collected at all. If that is the case,  
14 Skyryse was placed on notice of potential issues regarding completeness of Mr.  
15 Raithel's data at the beginning of 2023.

16 Skyryse should have disclosed that its collection of Mr. Raithel's laptop was  
17 not a complete image when the Parties previously conferred about these issues  
18 pursuant to the Court's instruction following the June 15, 2023 conference on these  
19 issues, and certainly before the incomplete image was produced to iDS on July 28,  
20 2023. Skyryse has represented to Moog that Mr. Raithel's actual laptop has been  
21 collected and therefore could be re-imaged as a complete forensic image per the  
22 Court's June 29 Order. Moog therefore respectfully requests that the Court order  
23 Skyryse to produce a complete and current forensic image of Mr. Raithel's  
24 Skyryse-issued laptop to iDS within 7 days. Moog also reserves the right to seek  
25 additional relief as a result of Skyryse's nondisclosure and failure to comply with  
26 the Court's Order.

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1       **III. Moog's Proposed Search Terms for Skyryse's Google Drive, Polarion,**  
 2       **and Git Repository**

3       **A. Meet and Confer Summary**

4       A true and correct copy of the Parties' written meet and confer  
 5       correspondence, between July 11, 2023 and August 11, 2023, is attached hereto as  
 6       Exhibit B. A relevant timeline summary for the Court's convenience is attached  
 7       hereto as Exhibit C. As reflected in the meet and confer correspondence:

- 8       • Skyryse contradicted the search capabilities that it represented to the Court,  
 9       advised that metadata was not searchable for Google Drive, and refused to  
 10      agree to a process whereby metadata would be searchable.
- 11      • Moog repeatedly asked for the same types of information for several weeks,  
 12      with Skyryse either not responding or taking several weeks to respond.
- 13      • The information provided by Skyryse kept changing.
- 14      • Skyryse failed to investigate basic, threshold issues with FTI until they were  
 15      suggested by Moog during the meet and confer process.
- 16      • Moog provided various potential solutions to Skyryse to solve the issue  
 17      regarding metadata searching in Google Drive, but Skyryse would not agree  
 18      to any of them.
- 19      • Moog stipulated to two extensions of the Court's initial deadline of July 31  
 20      to agree on search terms, to accommodate Skyryse's delay in providing  
 21      relevant information.<sup>2</sup>

22      Moog did everything it could to avoid burdening the Court with these issues. But,  
 23      after conferring with Skyryse extensively over the past six weeks, and given the

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25      <sup>2</sup> The meet and confer summary also demonstrates how on August 8 and 9, the  
 26      Parties agreed in writing to exchange their portions of this joint statement at 3:00  
 27      PM on August 11. Moog's counsel noted he had a commitment in the late  
 28      afternoon on August 11 and could not do a later exchange. Then, 24 minutes  
 29      before the exchange deadline, Skyryse demanded the deadline be pushed back by 3  
 30      hours to 6:00 PM. (Ex. B at 1-2.) This is not the first time Skyryse has broken  
 31      agreed-upon procedures for joint filings, including the timing of joint exchanges or  
 32      page limits. (See Dkt. 365, fn. 1).

1 inconsistent and deficient level of information provided by Skyryse, it is evident  
2 that these issues cannot be resolved without further assistance from the Court.

3 **B. Skyryse's Google Drive Account**

4 **1. Metadata is Critical to this Case**

5 Metadata is data that provides information about the authorship, company of  
6 origin, creation, modification, storage, security, and other properties of a  
7 document. Such metadata provides critical information in a case like this where  
8 theft, misappropriation, and obfuscation are involved.

9 Moog's Motion to Enforce (Dkt. 400) demonstrates how the metadata for  
10 documents in Skyryse's possession reflects theft and misappropriation of Moog  
11 data. For example, the Declarations of Bruce Pixley and Kevin Crozier in support  
12 of Moog's Motion to Enforce demonstrated, among other things, that: 1) 81  
13 documents on Skyryse employee Sathya Achar's laptop contained "Moog Inc." or  
14 "Moog" in the company metadata field; 2) the metadata for at least 11 different  
15 spreadsheets located on Skyryse personnel Eric Chung's Skyryse-laptop reflected  
16 they were created by Eric Chung on June 5, 2015 (before Skyryse was formed),  
17 and which corresponded to identical spreadsheets on defendant Robert Alin  
18 Pilkington's Moog laptop; 3) various software-related documents shared between  
19 Skyryse and Hummingbird personnel contained "Moog" or iterations thereof in the  
20 document metadata; and 4) dozens of Moog software checklists in the possession  
21 of Skyryse personnel Lori Bird contain "Moog" or iterations thereof in the  
22 document metadata. (Dkt. 400-3, ¶¶ 9, 12-16, 23, 24, 30, 34, 41, 47) (Dkt. 400-5,  
23 ¶¶ 31, 40, 42.) Thus, Moog has established that independent from the name or  
24 contents of particular documents, metadata for documents in Skyryse's possession  
25 reflect they are Moog documents.

26 **2. Skyryse Represents that it Can Search Metadata**

27 Moog's Motion to Enforce sought production and/or inspection of portions  
28 of Skyryse's Google Drive repository, and the entirety of Skyryse's Polarion and

1 Git repositories. In its tentative ruling issued on June 13, 2023, the Court directed  
2 the Parties to meet and confer about, among other things, Moog’s requests for  
3 production of Google Drive, Polarion, and Git. (Dkt. 532 at 22.)

4 After conferring, the Parties submitted a joint report to the Court. (Dkt. 546.)  
5 Therein, Skyryse vehemently objected to making its Google Drive, Polarion, and  
6 Git repositories available for inspection by Moog’s retained experts. For Polarion  
7 and Git, Skyryse asked the Court to order the Parties to “meet and confer on a set  
8 of search terms that will enable Skyryse to conduct a reasonable search for relevant  
9 material.” (Dkt. 546 at 11, 17.) Regarding Google Drive, Skyryse stated it was  
10 “willing to run an appropriate set of search terms over any Google Drive folders  
11 shared with Hummingbird personnel, review the search hits, and produce any  
12 relevant, non-privileged information.” (*Id.* at 13.)

13 The searching of metadata was expressly discussed by counsel and the Court  
14 during the June 29 hearing. Moog’s counsel expressly raised the concern in  
15 connection with Google Drive that search terms would be inadequate to capture  
16 documents that did not contain text demonstrating Moog ownership on its face.  
17 (6/29/23 Hrg. Tr. at 14:11-15:6.) Skyryse’s counsel said bluntly in response,  
18 “Search terms work.” (6/29/23 Hrg. Tr. at 15:15.) In fact, in advocating for why  
19 search terms should be used instead of production of entire repositories, Skyryse’s  
20 counsel stated later in the hearing: “But to go back to the point here, one of the  
21 reasons search terms work, and they may include the ***metadata***, which is the  
22 information about the files as opposed to their contents too . . .” (6/29/23 Hrg. Tr.  
23 at 19:25-20:2, emphasis added.) In response, Moog’s counsel explained to the  
24 Court why metadata is critical in this case. (*Id.* at 21:5-21.)

25 **3. Skyryse’s Proposal Does Not Comply with the Court’s June  
26 29 Order**

27 Shortly after the Parties started conferring, Skyryse told Moog that metadata  
28 was not searchable within Google Drive. This was surprising to Moog and contrary

1 to Skyryse's representations to the Court. This issue should have been investigated  
2 and disclosed by Skyryse when it was requesting the Court adopt its search term  
3 proposal, not after the Court's Order largely adopted Skyryse's search proposal.

4       Further, Skyryse later advised Moog that it cannot limit its search to the  
5 Google Drive folders accessed by Hummingbird personnel, former Moog  
6 personnel, and other Skyryse personnel identified in Moog's Motion to Enforce.  
7 This is notwithstanding Skyryse's previous proclamation in June 2023 that it was  
8 "willing to run an appropriate set of search terms over any Google Drive folders  
9 shared with Hummingbird personnel, review the search hits, and produce any  
10 relevant, non-privileged information." (Dkt. 546 at 13.) Again, this is something  
11 that Skyryse should have investigated before representing to the Court and Moog  
12 that such search functionality was available. And even if Skyryse were to claim  
13 that it was unaware of the need to search metadata prior to the June 15 hearing, it  
14 was absolutely on notice by the June 29 hearing. (See Dkt. 546 at 4-5.)

15       Skyryse's position is that it should only be required to run Moog's proposed  
16 search terms within Google Drive without any metadata searching, and then  
17 process resulting hits into Relativity whereby metadata can be searched in the  
18 second round. But, searching metadata after the first sweep undermines the entire  
19 purpose of a comprehensive search. If, for example, a document contains "Moog"  
20 in the metadata but not in the file name or contents of the document itself (as  
21 shown in dozens of examples throughout this case), it would not be picked up in  
22 the first sweep. This is problematic for obvious reasons.

23       Skyryse has also argued that metadata searching is not necessary because  
24 Moog's other proposed search terms will invariably hit on documents that contain  
25 "Moog" in the metadata. However, Moog has no way of knowing what these  
26 additional, relevant documents are, and therefore Moog has no idea if they would  
27 or would not hit on other search terms. This is a black box that Moog has no  
28 insight about. What Moog *does* know, however, is that if Skyryse has additional

1 documents with “Moog” in the metadata (as reflected in dozens of other files in the  
2 case), then that data is highly probative of theft and misappropriation. Moog would  
3 be substantially prejudiced and blocked from unearthing evidence of Defendants’  
4 possession and misappropriation of Moog data if metadata is not searched in  
5 Skyryse’s Google Drive.

6 **4. Skyryse’s “Burden” Concerns Lack Credibility**

7 Skyryse refuses to comply with the Court’s order and allow for searching  
8 across metadata in Google Drive based on alleged burden, including costs for  
9 processing and hosting its Google Drive data. Skyryse estimated these costs to be  
10 approximately \$136,000 to process the entire Google drive and approximately  
11 \$100,000 in hosting fees. While Moog understands there may be costs associated  
12 with processing large volumes of data, Moog is troubled by the fact that when  
13 advocating for a search term approach to the Court, Skyryse argued that permitting  
14 an inspection of the entire drive would be overbroad and that identifying portions  
15 of the Google Drive which are not relevant would be unduly burdensome. And,  
16 now, Skyryse is claiming that the very process it advocated for, and the Court  
17 ordered in response, is too burdensome. It is now evident that it would have been  
18 far less burdensome on Skyryse to make its Google Drive and Git repositories  
19 available for controlled, physical inspection (as Moog requested) rather than the  
20 search term process that Skyryse advocated for.

21 Skyryse claims that it must process the entirety of its Google Drive in order  
22 to search metadata. Even though it is not, and never has been, Moog’s obligation to  
23 teach Skyryse how to do the data searching and processing, or to advise Skyryse on  
24 how FTI should do its job, Moog has proposed multiple methods in which  
25 metadata can be searchable through Google Drive without having to process the  
26 entire repository.<sup>3</sup> (Ex. B at 8-9.) While Skyryse claims it is looking into these

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27 <sup>3</sup> Google provides two tools to extract data—Google Vault and Google Takeout.  
28 Skyryse chose to use Google Vault (which does not allow for metadata searching)  
to extract data from its Google Drive in the first instance without first discussing

1 issues, to date, Skyryse has not agreed to any of those proposals and contends they  
2 are not feasible.<sup>4</sup>

3 **5. Moog's Requested Relief**

4 Without doing a proper investigation into its own systems, Skyryse  
5 represented that it could and would apply search terms across metadata. Now  
6 Skyryse is failing to live up to its promises. While Moog has offered potential  
7 solutions as part of a good faith meet and confer process, it is Skyryse's obligation  
8 to comply with the Court's Order in terms of searching and processing its  
9 repositories.

10 Moog respectfully requests that the Court order Skyryse to comply with its  
11 Order in full regarding Google Drive within 30 days, including that Skyryse apply  
12 Moog's search terms to all available metadata for documents stored in Google  
13 Drive. If the Court elects not to issue such an order, Moog respectfully requests the  
14 Court to order Skyryse to produce log files for each of the individuals at issue  
15 (Hummingbird personnel, former Moog personnel, and other identified Skyryse  
16 personnel) so that Moog can review and request production of particular files.

17 **C. Skyryse's Git Repository**

18 The Parties have reached an agreement on the searching methodology for  
19 Skyryse's Git repository. However, as discussed further below, the Parties remain  
20 at an impasse regarding Moog's proposed search terms, including as run across  
21 Skyryse's Git repository.

22

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23 with Moog through the meet and confer process. Moog thereafter suggested using  
24 Google Takeout which would create individual JSON files containing metadata.  
25 Skyryse claimed that Google Takeout would not allow for keyword searching or  
26 de-duplication, but the key issue is that Google Takeout should be used to extract  
27 data from Google Drive (with JSON files), and then another tool could be used to  
search and cull the data. Any complaints by Skyryse about having to re-do the  
extraction or use a second tool should not be countenanced because Skyryse did  
not extract the data properly the first time.

28 <sup>4</sup> To the extent the Parties reach agreement on any of the outstanding issues  
addressed in this Joint Report before any hearing is held, the Parties can submit a  
status report to the Court.

1                   **D. Skyrse's Polarion Repository**

2                   The Parties have reached an agreement on the searching methodology and  
3 search terms to be run across Skyrse's Polarion repository.

4                   **E. Moog's Proposed Search Terms**

5                   Moog proposed a total of 437 search terms, one portion of which was  
6 targeted towards software-related documents and the other portion related to  
7 documents relating to hardware and electronics. Skyrse has objected to 21 of  
8 those terms based on alleged overbreadth and burden. Skyrse has not articulated  
9 any objection to any of the 21 proposed search terms based on relevance.

10                  Because Moog agreed in meet and confer to drop its "platform" search term  
11 from Skyrse's Git repository and agreed to further narrow its "Git" and "Jira"  
12 search terms, the search term hits identified by Skyrse for the 21 search terms in  
13 question across its Google Drive and Git repositories are as follows:

Search Term	Google Drive Hits	Google Drive Hits + Family	Google Drive Unique Hits	Git Hits	Git Hits + Family	Total Hits	Total Hits + Family
<b>AIN</b>	849	1190	168	452	593	1301	1783
<b>AMP</b>	2725	3880	1094	1277	1288	4002	5168
<b>Bird</b>	5181	7693	882	0	0	5181	7693
<b>CCDL</b>	3549	6331	1381	149	149	3698	6480
<b>Chung</b>	1544	1655	263	0	0	1544	1655
<b>Din</b>	1257	1816	327	497	499	1754	2135
<b>"Git" and "guide"</b>	433	534	43	117	117	550	651
<b>"Jira" and "guide"</b>	646	747	137	7	7	651	754
<b>Platform</b>	7139	8547	8	N/A	N/A	N/A	N/A
<b>PSAC</b>	2495	4210	236	132	134	2627	4343
<b>SCMP</b>	1381	2367	20	119	120	1500	2487
<b>SDD</b>	1926	3709	396	622	764	2548	4473

1	<b>SDP</b>	1952	4162	100	548	549	2500	4711
2	<b>SQAP</b>	1302	2256	5	95	96	1397	2352
3	<b>SVN</b>	1314	2235	378	1664	1664	2978	3899
4	<b>IO</b>	20	24	5	27011	27163	27031	27187
5	<b>API</b>	8	12	2	21492	21659	21500	21671
6	<b>TS</b>	10	10	6	7557	7559	7567	7569
7	<b>ETC</b>	0	0	0	5925	6068	5925	6068
8	<b>SS</b>	28	28	20	4969	4969	4997	4997
9	<b>TD</b>	0	0	0	4015	4158	4015	4158

8 Skyryse has further represented that based on Moog's narrowed search  
9 terms, the total number of documents that Skyryse would have to review from its  
10 Git repositories is 50,579 documents, and 62,479 documents from Google Drive,  
11 for a total of 113,058 documents.

12 On an aggregate level, given the facts and circumstances of this case,  
13 approximately 113,000 documents for Skyryse to review is not disproportional to  
14 the needs of this case. To the extent Skyryse complains the number of documents  
15 would be even higher if metadata is searched, such an argument fails because: 1) it  
16 is hypothetical and there is no way of knowing how many additional documents  
17 would be included; and 2) any additional burden is self-imposed because Skyryse  
18 is the party that argued for a search term approach. Any concerns based on volume  
19 or scope are a result of Skyryse's massive theft and misappropriation of  
20 approximately **1.4 million** Moog files. This is a large, expensive case. Skyryse is  
21 represented by Latham & Watkins and is using one the largest forensic vendors,  
22 FTI, in connection with electronic discovery matters. That Skyryse may need to  
23 review approximately 113,000 documents or more based on Moog's search terms  
24 is proportional to the needs of the case given the scale of Defendants' theft and  
25 misappropriation, and the concerns identified by the Court regarding Skyryse's  
26 possession and/or use of Moog data in its Order.

27 On an individual search term level, as reflected in the chart above, there is  
28 no search term that presents an undue burden based on hit counts. Notably,

1 Skyrse was only able to provide unique hit counts for Google Drive. For  
2 particular search terms, unique hit counts are the most relevant indicator of burden  
3 because that demonstrates how many unique documents hit on search terms in the  
4 aggregate. For example, if there are 10,000 hits on the search term “AIN,” and  
5 10,000 hits on the search term “AMP,” but “AIN” and “AMP” are used exclusively  
6 together in the same documents, then Skyrse would only have to review 10,000  
7 documents instead of 20,000 documents. As reflected above, the highest unique hit  
8 count in Google Drive for any particular search term is 1,381 documents. These  
9 relatively low unique hit counts are proportional to the needs of this case.

10 Skyrse’s has particularly objected to Moog’s proposed search term of  
11 “Platform” with a capital P for Google Drive. Platform is the formal name of one  
12 of Moog’s trade secrets (Dkt. 475-005 (Moog’s TSID), Trade Secret #4), is a  
13 prominent feature of Moog’s original and amended complaints, and is one of  
14 Moog’s key technologies (*see, e.g.*, Dkt. 579, ¶¶ 34–37.). Defendants took over  
15 4,500 unique files relating to Platform (see Dkt. 475-006 (Moog’s TSID, Ex. 2,  
16 “Platform” tab), as well as versions of these files (*see, e.g.*, Dkt. 579 ¶¶ 46, 54),  
17 which likely number in the hundreds or thousands. That defendants may need to  
18 review several thousand files that hit on “Platform” is proportional, given the scale  
19 of defendants’ theft of Platform. It is also fair, given it was Defendants’ theft of  
20 Platform that necessitates the search for that term to begin with. Moreover, the  
21 total number of unique hit counts for “Platform” in Google Drive **is just 8**  
22 **documents**. Thus, the inclusion of the “Platform” search term provides minimal  
23 additional burden on Skyrse.

24 Moog respectfully requests that the Court overrule Skyrse’s objections as  
25 to the 21 search terms at issue, and order Skyrse to search its Google Drive and  
26 Git repositories with all 437 search terms provided by Moog. Moog further  
27 respectfully requests that the Court schedule a hearing on August 24, 2023 to  
28 address the outstanding issues addressed herein.

## **SKYRYSE'S STATEMENT**

## I. INTRODUCTION

3 Pursuant to the Court’s Order, the Parties have met and conferred  
4 extensively over the course of the past five weeks to try to come to an agreement  
5 on an appropriate set of search terms to be run across Skyryse’s Google Drive, Git  
6 Repository, and Polarion repositories. (Dkt. 564 at 10.) This has been a slow and  
7 painstaking process, both because of the complexity of these repositories, which  
8 contain multiple terabytes of data of varying types, and because of the large  
9 number of very broad search terms Moog has proposed (437 search terms all  
10 together, many of which are generic terms commonly used in the industry with no  
11 special connection to this case). The Parties have twice requested an extension of  
12 the deadline set by the Court to agree to a finalized set of search terms (*see* Dkts.  
13 588, 596) but, regrettably, have not yet been able to reach agreement.

14 The obstacles to reaching agreement over an appropriate search strategy  
15 arise from Moog’s delay in proposing an initial set of search terms, the breadth of  
16 the terms it ultimately did propose, and its refusal to consider any meaningful  
17 modifications to those terms that might help target relevant information. Skyryse  
18 has worked closely with its e-discovery and forensic vendor and its in-house IT  
19 personnel, and has proposed reasonable compromises for an effective search  
20 strategy. As explained below, Skyryse’s proposals strike the right balance between  
21 getting Moog the information it claims to need (on top of the over four terabytes of  
22 discovery it has already received) and avoiding inflicting more excessive burden  
23 and expense on Skyryse in furtherance of a fishing expedition sure to ensnare  
24 troves of irrelevant but competitively sensitive information.

25 The Court ordered the parties to meet and confer regarding search terms on  
26 June 30. Moog did not propose any search terms until eleven days later, at which  
27 time it provided a set of 84 terms related to software and metadata. Then, on July  
28 20, nearly three weeks after the Court's Order, Moog provided Skyryse with a

1 second set of 353 “hardware” search terms, expanding the total to 437 search  
2 terms. In this way, Moog delayed the process by three weeks, after which it  
3 demanded that Skyryse process, analyze, and search what would amount to  
4 terabytes of data over multiple repositories, all in the remaining week-and-a-half  
5 before the initial July 31 deadline set by the Court. (Dkt. 564.)

6 Despite these unreasonable demands, Skyryse spent hundreds of hours  
7 working with its vendors and its IT team to assess Moog’s proposed keywords and  
8 the universe of data those keywords implicated. Specifically, Skyryse ran Moog’s  
9 more than 400 proposed search terms, provided multiple reports to Moog showing  
10 that they hit on an enormous and unreasonable number of files—161,181 separate  
11 documents—which would take months for Skyryse’s e-discovery vendor to  
12 process and for Skyryse to review and produce. Skyryse also determined that if  
13 just 15 of these search terms were removed, then the overall number of hits  
14 dropped significantly to a reasonable number Skyryse would agree to. But,  
15 inexplicably, Moog refused to meaningfully narrow its proposed terms and takes  
16 the position that the remaining **422** terms are not enough. As shown below, these  
17 422 terms are more than enough, and the Court should permit Skyryse to proceed  
18 with them, dropping only the 15 most significant offenders from the original set.

19 Moog also demanded that its search terms be run across the metadata for  
20 Skyryse’s Google Drive repository. But as explained to Moog, this would impose  
21 an additional \$250,000 in costs on Skyryse with little or no additional relevant  
22 documents being collected. To avoid this needless waste of money and time,  
23 Skyryse proposed that, instead, it run the final set of search terms against the  
24 entirety of the contents and file names in its Google Drive—and not just the subset  
25 of folders ordered by the Court. Yet Moog again refused. This compromise  
26 approach would give Moog access to even a greater base set of documents than  
27 was otherwise required, and is likely to capture all of the same documents that a  
28 metadata search would locate. Nothing more should be required by the Court.

1        In the end, Moog’s 437 overly broad search terms and demands for metadata  
2 searches across all repositories are unworkable, and would impose undue burden  
3 and expense on Skyryse far out of proportion with the needs of this case.  
4 Accordingly, Moog’s requested approach should be rejected, and Skyryse’s  
5 compromise approaches set forth below should be adopted.

6 **II. GOOGLE DRIVE**

7        In its Order, the Court denied Moog’s request for production of Skyryse’s  
8 entire Google Drive and instead ordered the parties to agree on a set of search  
9 terms to run against certain folders on that repository—specifically, “the Google  
10 Drive Account folders that were accessed by Hummingbird personnel, former  
11 Moog employees, or the identified Skyryse personnel in the parties’ Joint Report.”  
12 (Dkt. 564 at 7.) Moog responded with an unreasonable set of 437 overly broad  
13 search terms, and has not committed to narrowing that set.

14            **1. Search Terms**

15        Moog’s search terms include numerous generic terms that have no specific  
16 relevance to this action. For example, “AMP,” “AIN,” “SDD” and “SDP” are  
17 generic terms commonly used in the industry and are consequently pulling in  
18 documents that have no relation to Moog. The same is true of Moog’s proposed  
19 terms like “JIRA,” a commonly used project tracking system, and “Git,” a  
20 commonly used repository. These search terms are unreasonable, unduly  
21 burdensome, and no proportional to the needs of this case.

22        By way of compromise, Skyryse has offered to apply all but 15 of Moog’s  
23 search terms. Specifically, if only the following 15 terms were eliminated from the  
24 search set, then the number of documents (before a privilege or relevance review)  
25 would decrease across all of the repositories substantially.

26  
27  
28

1	<b>Search Term</b>	<b>Number of Documents that Hit on</b>
2		<b>Each Term in all Repositories</b>
3	Platform	158,600
4	Git	49,556
5	IO_	27,031
6	API_	21,500
7	TS_	7,567
8	Jira	6,882
9	ETC.	5,925
10	AMP	4,002
11	SS_	4,997
12	TD_	4,015
13	CCDL	3,698
14	SVN	2,978
15	PSAC	2,627
16	SDP	2,500
17	SDD	2,548

25 While also overbroad and certain to yield many thousands of irrelevant documents,  
26 the reduced set still gives Moog a huge number of search terms and a huge number  
27 of documents to review, while reducing the burden and expense on Skyryse.  
28

## 2. Metadata

2 Beyond its unreasonable search terms, Moog insists that Skyryse to do the  
3 impossible: run these search terms over the *metadata* for every file on Skyryse's  
4 Google Drive repository before it is loaded into a review database. As Skyryse has  
5 explained to Moog, this is technically impossible<sup>5</sup>, and the work-arounds Moog  
6 demands impose enormous and unreasonable expense on Skyryse. Here again,  
7 Skyryse proposed a number of reasonable compromises—including that Moog's  
8 search terms (less the 15 discussed above) be run across the *entire* Google drive  
9 instead of only across certain folders—but Moog refused them all.

10 Moog has insisted that its search terms be applied to all of the metadata on  
11 Skyryse’s Google Drive “in the first sweep.” But this is not possible. As  
12 discussed above, there simply is no tool that would permit this. Rather, to apply  
13 the search terms to the Google Drive metadata, all of the 9.48 *terabytes* of files  
14 from that drive would first need to be loaded into a new e-discovery database,  
15 regardless of their relevance to this case, and then they would need to be processed  
16 for privilege and relevance. According to Skyryse’s vendor, the additional cost  
17 just to process and host the Google Drive files on a review database to permit  
18 keyword searching of their metadata would be roughly \$250,000.<sup>6</sup> This is, on its  
19 face, unduly burdensome and expensive.

20 Skyrse proposed to Moog, and repeats here, that a more reasonable  
21 approach would be simply to run the final set of search terms (*i.e.*, Moog's terms  
22 minus the 15 discussed above) against all of the contents and file names of the files

23 <sup>5</sup> Moog claims that “Skyryse represented to the Court that it could adequately run  
24 search terms on Google Drive, including on metadata, in lieu of making its entire  
25 repository available.” (Ex. 1, K. Naqvi August 9 email.) This mischaracterizes  
26 Skyryse’s counsel’s statements at the June 29 hearing. Skyryse’s counsel was  
27 clear that “one of the reasons search terms work” generally is because “they may  
include the metadata.” (Dkt. 570, June 29 Hearing Tr. at 20:25-21:1.) This in no  
way was a representation that metadata for Google Drive specifically can be  
searched with its standard tools—it cannot.

<sup>27</sup> 6 If the Court were to compel this additional processing to run Moog's keywords across the Google Drive files, Skyrse respectfully requests that the additional costs be borne by Moog, not Skyrse.

1 in the Google Drive. This approach gives Moog protection by not limiting the  
2 search only to select folders, but avoids the needless expense imposed by Moog's  
3 metadata demands. It is highly likely that any documents that would hit on  
4 Moog's search terms in the metadata would also hit on those search terms in the  
5 contents of the documents or their file names, and Moog has yet to provide any  
6 examples of documents that *do* contain relevant information in the metadata but *do*  
7 *not* hit on one of Moog's more than 400 search terms in the document itself. As  
8 such, the exorbitant expense of running the search terms against the Google Drive  
9 documents' metadata is unlike to yield any additional documents that would not  
10 already have been produced by simply apply the search terms to the files  
11 themselves.

12 Moog, of course, refused this proposal and reverted opportunistically to its  
13 original demand that Skyryse hand over its entire 9.48 terabyte Google Drive. This  
14 repository, however, is extremely sensitive in that it is used across the entire  
15 business, and the Court has already denied this demand from Moog. Specifically,  
16 the Court ruled that “[t]he TRO Stipulation does not entitle Moog to ‘full,  
17 unfettered access’ to Skyryse’s entire Google Drive Account, especially since  
18 Moog has identified only a single Google Drive folder that Mr. Pilkington  
19 purportedly shared with Hummingbird employees.” (Dkt. 564 at 7.) Just four days  
20 ago, Moog also proposed several other tools might be used in searching the Google  
21 Drive. Although Skyryse is still investigating these proposed tools, none appears to  
22 be workable. For example, Moog proposes that Skyryse use a tool called Google  
23 Takeout instead of Google Vault to process the Google Drive data. But Google  
24 Takeout is only an export function and does not have the searching and de-  
25 duplication capabilities that Google Vault has, and as a result is unhelpful for the  
26 Parties' purposes here.

27 Respectfully, the Court should again reject Moog's demand for the entire  
28 Google Drive account, and its demand that Skyryse spends hundreds of thousands

1 of dollars in the wasteful exercise of importing that entire repository into an e-  
2 discovery database for searching. Rather, at most, Skyryse's proposal should be  
3 adopted: the 422 search terms should be applied to all of the file names and  
4 contents in that Google Drive repository, and nothing more.

5 **III. GIT REPOSITORIES**

6 As Skyryse informed Moog at the start of the Parties' search term  
7 negotiations, there are two Git repositories containing Skyryse's code: Skyryse's  
8 current repository, which was imaged in April 2023, and an older version of  
9 Skyryse's Git repository, which was imaged for purposes of this litigation in April  
10 2022 but is no longer in use or accessible by Skyryse employees and has been  
11 maintained for litigation preservation purposes only. Portions of both repositories  
12 have been made available to Moog for inspection pursuant to the Source Code  
13 Protocol and Skyryse has already taken steps to remove from its current repository  
14 any code that Moog alleged constituted Moog non-public information (*see* Skyryse  
15 Opposition to Moog's Sanctions Motion, Dkt. 452-1 at 22-23.)

16 Here again the parties' dispute centers around Moog's overbroad set of 437  
17 search terms, which hit on a total of 97,172 separate code files in both the old and  
18 new Git repositories. This is an excessive number that would take inordinate time  
19 and resources to compile and review, and invariably would include irrelevant data.  
20 When Skyryse reported this hit count to Moog and requested that Moog propose  
21 removing terms or making modifications to ensure that its terms targeted Moog  
22 information, Moog was unwilling to modify its terms except to modify the term  
23 "Git," which on its face is a vastly over broad, to remove the term "Platform"  
24 which caused tens of thousands of hits, and replace the term "Jira" with ("Jira"  
25 AND "guide").<sup>7</sup> If the 15 search terms addressed above are removed, then the hits  
26  
27

---

28 <sup>7</sup> And even these minor modifications Moog claims it is still assessing, and has not  
committed to implementing.

1 on the Git repository drop substantially to a number that is still undoubtedly  
2 overbroad, but one Skyryse can live with.

3       Although Skyryse has asked Moog to consider dropping several of its  
4 generic search terms, or narrowing them, for example, by using Boolean searches  
5 to target Moog-specific programs and documents (such as “AMP AND Moog”), to  
6 date, Moog has proposed only three modifications to its 437 terms. Moog now  
7 argues that it cannot modify its search terms unless it can see the number of  
8 “unique hits” on each term—that is, the number of code files that hit only on each  
9 individual term but no others. But as Skyryse has informed Moog, its e-discovery  
10 vendor confirmed that unique hit counts are not available within Git. Moog has  
11 never responded in substance to challenge that technical constraint. Moreover,  
12 unique hit counts are not a useful metric here. With over 400 search terms at play,  
13 it is inevitable that for some given individual search terms on their own, only a  
14 small number of documents will hit. But this does not change the simple fact that  
15 the total number of code files that hit on all Moog’s 400-plus terms is 97,172.  
16 Without a fair narrowing of Moog’s search terms, each of those files would need to  
17 be loaded to Relativity and reviewed, imposing substantial expense and burden  
18 beyond what is reasonable or proportional in this case.

19       Accordingly, Skyryse respectfully requests that the Court endorse its  
20 proposal to reduce Moog’s search terms to eliminate the 15 listed above.

21 **IV. POLARION**

22       The Parties appear to be close to reaching an agreement on the search terms  
23 and protocols to be run across the Polarion repository. As Skyryse has informed  
24 Moog, the Polarion repository is a dynamic, web-based interface containing  
25 fragments of information rather than full files, although it can link to full files that  
26 exist outside of Polarion. Links can be followed to retrieve the attachments, which  
27 exist outside of Polarion, provided the links are still functional. As with Google  
28 Drive, metadata is not searchable through Polarion. Because of the way Polarion

1 is set up, Skyryse determined that the best way to run Moog's search terms was to  
2 have the engineer who manages Polarion run the terms manually through the  
3 database and export out of Polarion any of the fragments of information that hit on  
4 those search terms. For the sake of completeness, Skyryse requested that this  
5 engineer also download any linked attachments that hit on Moog's search terms,  
6 even though those documents may not actually reside within Polarion.

7 Skyryse has shared all of the above information regarding the Polarion  
8 repository with Moog and invited Moog, in turn, to share any input or searching  
9 suggestions it had based on discussions with its own experts. Moog has not come  
10 back to Skyryse with any different or additional information, so Skyryse has  
11 proceeded with its search as described above. Skyryse also agreed to Moog's  
12 demand that Skyryse search Polarion for fifty-two specific SKY-DOC documents  
13 (and all versions thereof) in a good faith effort to work with Moog. Nothing more  
14 should be required.

15 **V. REID RAITHEL AND LORI BIRD'S LAPTOPS**

16 Per the Court's order, Skyryse produced an image of both Reid Raithel's and  
17 Lori Bird's Apple laptops to iDS on July 28, 2023. Contemporaneously with that  
18 production, Skyryse provided iDS with a list of files to withhold based on  
19 privilege. All of the withheld files are on Ms. Bird's laptop. The images provided  
20 to iDS were made by Skyryse's e-discovery vendor, FTI, using Cellebrite Digital  
21 Collector ("DC").

22 On Monday, August 7, 2023, Moog raised a complaint alleging  
23 incompleteness of the image of Mr. Raithel's Apple laptop. It has raised no such  
24 complaints about Ms. Bird's laptop. Skyryse immediately investigated and  
25 determined that DC is an industry-standard tool for imaging Apple computers, and  
26 the collection of data from both Apple computers was done to the fullest extent  
27 possible. As such, Skyryse, via its e-discovery vendor, complied in full with its  
28 obligations. It is true that DC is limited to collecting an image at a logical level

1 when used to image certain Apple computers, specifically, Apple computers such  
2 as Mr. Raithel's running the 12.0 version of macOS.<sup>8</sup> But this limitation is  
3 inherent in DC, and not a constraint Skyryse or its vendor imposed in this case or  
4 which could somehow have been changed for this case. And, more importantly,  
5 the logical level image from DC still collected all of the user-created data on Mr.  
6 Raithel's computer.

7 Moog also complains that the image of Mr. Raithel's laptop was created too  
8 long ago. But the Court did not require that Skyryse provide an image of Mr.  
9 Raithel's laptop from a certain date, and the image that was provided post-dates the  
10 start of Mr. Raithel's employment at Skyryse and so would capture any relevant  
11 files from his Skyryse computer at that time. Moreover, Skyryse is in the process  
12 of determining whether any additional responsive, non-privileged information  
13 resides on Mr. Raithel's laptop that can be collected, including any that post-dates  
14 the image, and will produce any such information as appropriate.

15 For these reasons, the Court should order no further relief concerning Mr.  
16 Raithel's laptop.

17  
18 Dated: August 11, 2023

**SHEPPARD, MULLIN, RICHTER  
&HAMPTON LLP**

20 By: /s/ Kazim A. Naqvi  
21 Counsel for Plaintiff and  
Counterdefendant Moog Inc.

22 **LATHAM & WATKINS LLP**

23 By: /s/ Gabriel S. Gross  
24 Counsel for Defendant and  
25 Counterclaimant Skyryse, Inc.

26  
27  
28 <sup>8</sup> Ms. Bird's computer is running macOS 10.15.7, which is not subject to the same  
limitation.

## **ATTESTATION**

Pursuant to Civil Local Rule 5-4.3.4, I, Kazim A. Naqvi, attest that concurrence in the filing of this document has been obtained by all its signatories.

Dated: August 11, 2023

/s/ Kazim A. Naqvi